

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 20-1593V

UNPUBLISHED

SETH M. NIESEN,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 22, 2022

Special Processing Unit (SPU);
Ruling on Entitlement; Concession;
Table Injury; Influenza (Flu) Vaccine;
Shoulder Injury Related to Vaccine
Administration (SIRVA)

Matthew Menzer, Menzer Law Firm, PLLC, Seattle, WA, for Petitioner.

Catherine Stolar, U.S. Department of Justice, Washington, DC, for Respondent.

RULING ON ENTITLEMENT¹

On November 16, 2020, Seth Niesen filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges he suffered a right shoulder injury related to vaccine administration (SIRVA) resulting from an influenza (“flu”) vaccination received on February 27, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On February 22, 2022, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report at 1. Specifically, Respondent agrees that Petitioner had no history of pain, inflammation, or dysfunction of the affected shoulder prior to his vaccination that would explain the alleged

¹ Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

symptoms and examination findings occurring after vaccination;³ Petitioner more likely than not suffered the onset of pain within 48 hours of vaccination; Petitioner's pain and reduced range of motion were limited to his right shoulder; and there is no other condition or abnormality present that would explain Petitioner's symptoms. *Id.* at 8. Respondent further agrees that Petitioner satisfies the statutory severity requirement by suffering the residual effects or complications of his injury for more than six months after vaccination. *Id.* at 8-9.

In view of Respondent's position and the evidence of record, I find that Petitioner is entitled to compensation.

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ In his Rule 4 report, Respondent notes that although Petitioner had a history of prior right shoulder pain after a bike accident in 2019, this pain appeared to have resolved prior to his vaccination, and thus does not preclude Petitioner from meeting the Table criteria. ECF 25 at 8 n.4 (citing Ex 2 at 322-23).